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U.S. DISTRICT COURT
N.D. OF ALABAMA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA

EMPIRE PIPE & SUPPLY COMPANY, INC.,

Plaintiff,

vs.

BILLY CARTER, TRINITY INDUSTRIES, LLC, AND TRINITY INDUSTRIES, LLC D/B/A PIPE INSPECTORS,

Defendants.

CIVIL ACTION NO. __________

JURY TRIAL DEMANDED

COMPLAINT

Empire Pipe & Supply Company, Inc. ("Empire"), for its Complaint for breach of duty of loyalty and fiduciary duty, trade secret misappropriation, interference with business relationships, fraud, conspiracy, conversion and unjust enrichment against Billy Carter, Trinity Industries, LLC, and Trinity Industries, LLC d/b/a Pipe Inspectors (referred to collectively herein as "Defendants"), alleges as follows:

PARTIES

1. Empire is a Delaware corporation with its principal place of business at 2301 Alton Road, Birmingham, Alabama 35210.

2. Defendant Billy Carter ("Carter") is a resident and citizen of the State of Florida. At all times relevant to this Complaint, Carter was employed by

Empire as a sales representative. Carter is sued both individually and as an agent of Trinity Industries, LLC ("Trinity") and Trinity Industries, LLC d/b/a Pipe Inspectors ("Pipe Inspectors"). During the time relevant to this Complaint, Carter conducted business in Alabama.

3. Trinity is a Florida limited liability corporation with its principal place of business at 95 Ashley Street, Havana, Florida 32333. During the time relevant to this Complaint, Trinity conducted business under the name of Pipe Inspectors in Alabama, and elsewhere.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction in this matter pursuant to 18 U.S.C. § 1836, as amended, which provides Federal Courts with subject matter jurisdiction over civil actions based on Defendants' misappropriation of trade secrets. Accordingly, federal question jurisdiction exists pursuant to 28 U.S.C. § 1331, in addition to jurisdiction over the Alabama state statutory and common law claims in accordance with the principles of supplemental jurisdiction in 28 U.S.C. § 1367(a).

5. This Court also has diversity jurisdiction over this action pursuant to 28 U.S.C. § 1332 because the amount in controversy exceeds $75,000, exclusive of interests and costs, and it is between citizens of different states.

6. Venue is proper in this District under 28 U.S.C. § 1391(b)(2) because a substantial portion of the events or omissions giving rise to the claims set forth in this Complaint occurred in this District.

7. Exercise of jurisdiction over Carter is appropriate in this District because he conducts extensive business activities within this State. Carter systematically and purposefully availed himself of this forum, as he was employed as a sales representative at Empire – a Birmingham based company – for more than two years. There is a substantial nexus between Carter's purposeful availment of this forum and Empire's claims. Carter also acted wrongfully and illegally with the intent of causing harm to Empire – a known Alabama resident – and he was aware the damaging effects of those acts would be felt, and in fact have been felt, by Empire in this District.

8. Exercise of jurisdiction over Trinity is appropriate in this District because Trinity conducts extensive business activities within this State. Trinity purposefully availed itself of this forum by conducting business in Alabama. There is a substantial nexus between Trinity's purposeful availment of this forum and Empire's claims. Trinity, through its agents, also engaged in wrongful and illegal acts in the United States and in Alabama. Those act were taken with the intent of causing harm to Empire – a known Alabama resident

– and Trinity was aware the damaging effects of those acts would be felt, and in fact have been felt, by Empire in this District.

9. Exercise of jurisdiction over Trinity Industries, LLC d/b/a Pipe Inspectors is appropriate in this District because Trinity Industries, LLC d/b/a Pipe Inspectors conducts extensive business activities within this State. Pipe Inspectors purposefully availed itself of this forum by conducting business in Alabama, and there is a substantial nexus between those activities and Empire's claims. Pipe Inspectors, through its agents, also engaged in wrongful and illegal acts in the United States and in Alabama. Those acts were taken with the intent of causing harm to Empire – a known Alabama resident – and Pipe Inspectors was aware the damaging effects of those acts would be felt, and in fact have been felt, by Empire in this District.

FACTS

10. Empire is an Alabama-based business that markets and sells equipment and services relating to underground utilities. Empire's customers include municipalities, counties, utilities boards, contractors and other entities in Alabama, Mississippi, Florida, Georgia, North Carolina, South Carolina, Virginia, Tennessee and Kentucky.

11. As part of its business, Empire enters into distribution agreements with manufacturers of underground utility products. Pursuant to those agreements, Empire then markets and sells those products to its customers.

12. On or about April 13, 2015, Empire hired Carter as a full time employee and sales representative. At all times relevant to this Complaint, Carter was a full time employee with Empire and was paid in that capacity. Empire terminated Carter's employment on October 9, 2017.

13. Carter's responsibilities at Empire principally involved calling on Empire's current and prospective customers to market and sell underground utility products and services utilized in underground utility servicing, construction and repair. As an Empire employee, Carter's sales territory included Florida and Alabama.

14. As a full time employee at Empire, Carter owed Empire a duty of loyalty and a fiduciary duty. Additionally, when Empire hired Carter, he received and agreed to follow Empire's policies and procedures, some of which are set forth in its Employee Handbook. Among other things, the Employee Handbook states, "A Company employee may not accept any extra work of any kind that will require his or her time and energy to a degree that will interfere with the performance of duties required by the Company."

15. On information and belief, beginning in approximately April of 2015, the Defendants engaged in a series of intentional, tortious and fraudulent acts that severely damaged Empire's business. Those acts are set forth below.

16. Less than one year prior to his hiring at Empire, Carter formed Trinity Industries, LLC, a Florida limited liability corporation. According to the Florida Secretary of State's website, Trinity was formed on or about on or about July 14, 2014, and its Registered Agent is Carter's wife. On information and belief, Carter and his wife are the owners of Trinity.

17. Trinity does business under the name Pipe Inspectors. According to its website, Pipe Inspectors is "[a] Trinity Industries LLC Company" located in Tallahassee, Florida.[1] Pipe Inspectors' website represents that it sells cameras, pipe repair equipment, pipe cutting equipment, sewer equipment, water and sewer line inspection equipment, lampe plugs, hydrants and software – the same types of underground utility equipment Empire hired Carter to sell to Empire's customers.

18. Empire hired Carter in April of 2015. At no point during his employment did Carter inform Empire that he formed Trinity less than a year earlier, that Trinity transacted business in the name of Pipe Inspectors, or that Pipe Inspectors sold underground utility products.

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[1] Available at http://pipeinspectors.us/ (last visited on October 10, 2017).

19. Throughout his employment with Empire, Carter secretly solicited Empire's current and prospective customers on behalf of Trinity and Pipe Inspectors. The business the Defendants secretly conducted with Empire's current and prospective customers has been substantial. For example, upon information and belief, the Defendants solicited over $7.2 million – and closed over $2.9 million – in sales of underground utility products for a single national manufacturer prior to 2017. Those sales were to Empire's current and prospective customers and occurred while Carter was employed with Empire.

20. On January 25, 2017, Carter signed a five year exclusive distribution contract with this same manufacturer on behalf of "Trinity Industries LLC DBA Pipe Inspectors," for the purpose of marketing and selling the underground utility equipment to Empire's current and prospective customers in Alabama, Georgia and Florida. On information and belief, from January 3, 2017, to October 3, 2017, Carter quoted over $3.0 million in sales on behalf of this manufacturer to Empire's current and prospective customers.

21. On or about September 18, 2017, Carter signed another contract with another manufacturer of underground utility products to act as a licensed distributor for that manufacturer. Carter signed that contract on behalf Pipe Inspectors as its "General Manager." That contract provides that Pipe Inspectors will

market and sell that manufacturer's products to customers in Alabama, Georgia and Florida and will receive a 10% commission on those sales.

22. All of the above-described business should have gone to Empire. Indeed, Carter's principal responsibility at Empire was to market and sell these same types of products and services. But for Carter's wrongful acts and breach of his duty of loyalty to Empire, these sales would have been made by Empire. They were not, and as a result Empire suffered damages in the form of hundreds of thousands of dollars in lost profits and revenue.[2]

23. On information and belief, without Empire's knowledge or consent, Carter also entered into a purported contract on behalf of Empire with one of Empire's customers that was contrary to Empire's best interests, business plan, and historical business practices, and then misled Empire's upper management regarding the Company's sales to that customer.

24. Defendants' wrongful conduct is not limited to secretly usurping Empire's business opportunities and otherwise acting contrary to Empire's best interests. During the course of secretly soliciting and selling products to Empire's customers, the Defendants misappropriated Empire's confidential

[2] The full extent of the sales made by the Defendants to Empire's current and prospective customer base is currently unknown. Empire fully expects, however, that discovery will reveal additional instances in which the Defendants wrongfully solicited and sold underground utility products to Empire's current and prospective customers.

business information and trade secrets, utilizing that material to further their own interests. Carter e-mailed much of this material from his Empire work e-mail account to either his personal e-mail account or his Pipe Inspectors e-mail account.

25. For example, on or about September 21, 2017, Carter e-mailed himself a spreadsheet which included a compilation of confidential information relating to a number of Empire's current and prospective customers. The spreadsheet included specific, non-public contact information for individuals who worked for those customers and notes regarding the needs of those customers as it related to underground utility products. On information and belief, Carter then provided this spreadsheet to an underground utility products manufacturer for which Pipe Inspectors served as a distributor. Indeed, the Defendants signed an exclusive distribution agreement with this manufacturer just three days earlier which provided that Pipe Inspectors would market and sell that manufacturer's products to customers in Alabama, Georgia and Florida and would receive a 10% commission on those sales.

26. Empire does not publicly disclose the confidential information included in this spreadsheet. This information is obtained only through developing relationships with current and prospective customers and understanding their unique needs. As such, it is not readily ascertainable, or susceptible of being

derived, from publicly available information. Empire took reasonable steps to ensure the confidentiality of this material. This information is accessible only via Empire's computer system by authorized Empire personnel, who are required to enter a password to access the material. Carter wrongfully utilized his access to Empire's computer system to e-mail himself this confidential information from his Empire work e-mail account to his personal e-mail account, and then utilized that material to further the Defendants' business. More specifically, Defendants utilized this information to contact, solicit and ultimately sell competing products to Empire's current and prospective customers, and to secure at least two distribution contracts with manufacturers of underground utility products.

27. On or about July 25, 2017, Carter e-mailed a representative of a multinational company which specializes in the development of public works and the integration of construction and equipment, attaching a PowerPoint business plan, sales strategy, and marketing presentation Empire created for its Florida markets. This company is one of Empire's competitors. The PowerPoint contained confidential information relating to Empire's business plan, sales strategy, and marketing plans in Florida. Among other things, it contained information regarding Empire's anticipated utilization of water audits in order to market and sell new water meter products to Florida customers. Carter

informed the representative of Empire's competitor: "This is what I used to get part of Florida for empire. I have a complete distribution presentation I did to use for Florida. [L]ooking for it[.]"

28. The confidential information contained in Empire's Florida business plan, sales strategy, and marketing presentation is not readily ascertainable, or susceptible of being derived, from publicly available information. Empire kept this information confidential and shared it with only one underground utility products manufacturer in an effort to secure a distribution agreement with that manufacturer under the mutual understanding the material would remain confidential. This PowerPoint presentation was accessible only via Empire's computer system by authorized Empire personnel, who are required to enter a password to access the material. Carter wrongfully utilized his access to Empire's computer system to e-mail himself a copy of this material from his Empire work e-mail account to his personal e-mail account, and then he disseminated the material to further the Defendants' business and to Empire's detriment.

29. Defendants have also utilized Empire's bid spreadsheets and forms to solicit and obtain business for themselves from Empire's current and prospective customers. In addition to containing Empire's bid format and disclosure

language, these spreadsheets and forms contained Empire's confidential pricing information which reflects costs and profit margins.

30. The confidential information contained in Empire's bid spreadsheets and forms is not readily ascertainable, or susceptible of being derived, from publicly available information. Empire does not publicly disclose the cost and pricing information contained in these spreadsheets and forms, and it took reasonable steps to ensure its confidentiality. These spreadsheets and forms are accessible only via Empire's computer system by authorized Empire personnel, who are required to enter a password to access the material. Carter wrongfully utilized his access to Empire's computer system to e-mail himself copies of this material from his Empire work e-mail account to his personal e-mail account, and then utilized that material to further the Defendants' business. More specifically, the Defendants utilized these forms and spreadsheets to formulate their own bids which they then submitted to Empire's current and prospective customers.

31. In addition to clandestinely selling competing products and services to Empire's current and prospective customers while utilizing Empire's confidential and propriety information, the Defendants defrauded Empire by submitting false expense invoices. In January 2017, and unbeknownst to Empire, the Defendants called on a number of potential customers in Florida

to market Pipe Inspectors' services and products. Despite the fact he was soliciting business on behalf of Trinity and Pipe Inspectors, Carter submitted reimbursement requests to Empire for the expenses he incurred during this time period. Those expense reimbursement requests sought payment for, among other things, mileage, meals and lodging. Based on Carter's false and fraudulent representation that those expenses were legitimately incurred while performing work on behalf of Empire, Empire reimbursed Carter for those expenses.

32. Carter also sought, and Empire provided, reimbursement for expenses associated with Carter's cellular phone based on Carter's representations to Empire that those expenses were incurred during the course of his employment with Empire. On information and belief, Carter utilized his cell phone to further his own business interests – and those of Pipe Inspectors and Trinity. Despite the fact he was not furthering – and was in fact acting directly adverse to – Empire's interests, Carter nonetheless submitted fraudulent reimbursement requests to Empire for those cell phone expenses. Based on Carter's representations that those expenses were incurred while furthering Empire's business interests, Empire reimbursed Carter for those expenses.

33. At the same time the Defendants were secretly soliciting Empire's customers, usurping its business, utilizing its confidential and propriety information, and

submitting fraudulent expense reimbursement requests, Carter lied directly to Empire to conceal all of this misconduct and leave Empire with the impression that Carter was working diligently on the Company's behalf. On or about January 2, 2017, Carter wrote an e-mail to a member of Empire's upper management, thanking Empire for a recent substantial pay raise while falsely touting his "dedication to . . . Empire Pipe" and giving his "absolute word I will continue to work even harder this year to make us even more successful":

> Just want to confirm results from our end of year meeting as well as game plan for 2017.
>
> First, Wanted to thank you personally on behalf of myself and my family for taking my salary from [xx] to the [xx,xxx] per year, beginning in January 2017. This puts me where I wanted to be originally when I signed up with Empire Pipe & Supply. It also says a lot for your confidence in me, my abilities as well as my dedication to you and Empire Pipe. I can give you my absolute word I will continue to work even harder this year to make us even more successful. After this increase we will have no need in future to discuss again. I am where I want to be short of you making possible further upgrades or changes or till the point I become either a straight salary or 1099 (straight commission) Employee.

COUNTS

COUNT I
MISAPPROPRIATION OF TRADE SECRETS UNDER THE DEFEND TRADE SECRETS ACT OF 2016

34. Empire incorporates Paragraphs 1 through 33 above as if set forth fully herein.

35. This is a cause of action against Defendants for violation of the Defend Trade Secrets Act of 2016 ("DTSA"), 18 U.S.C. § 1831.

36. The DTSA provides, in pertinent part, the following:

> An owner of a trade secret that is misappropriated may bring a civil action [in federal court] under this subsection if the trade secret is related to a product or service used in, or intended for use in, interstate or foreign commerce. *Id*.

37. The DTSA retained the definition of "trade secrets" under the original EEA, which generally follows the Uniform Trade Secrets Act.

38. This definition of "trade secrets" provided by 18 U.S.C. § 1839(3) covers "all forms and types of" information, regardless of how it is stored, where: "the owner thereof has taken reasonable measures to keep such information secret; and the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by another person who can obtain economic value from the disclosure or use of the information." 18 U.S.C. § 1839(3).

39. The DTSA divides the term misappropriation into two (2) categories: (1) improper acquisition, and (2) improper use or disclosure.

40. The DTSA defines improper acquisition as the "acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means." 18 U.S.C. § 1839(5)(A).

41. The DTSA defines improper use as "disclosure or use of a trade secret of another without the express or implied consent by a person who: (a) used improper means to acquire knowledge of the trade secret; or (b) at the time of

disclosure or use, knew or had reason to know that his/her knowledge of a trade secret was (i) derived from or through a person who had utilized improper means to acquire it; (ii) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; . . . .” 18 U.S.C. § 1839(5)(B).

42. Improper means is defined to include “theft, bribery, misrepresentation, breach or inducement of a breach of a duty of secrecy, or espionage through electronic or other means.” 18 U.S.C. § 1839(6).

43. Empire is the owner of all confidential, proprietary and trade secret information as described and set forth in Paragraphs 24 through 30 above. Specifically, Empire is the owner of the confidential, propriety and trade secret information as contained in the spreadsheet, Florida business plan, sales strategy, and marketing presentation PowerPoint, and bid documents. Therefore, to the extent Defendants continue to possess and use these trade secrets, Empire has sustained and will continue to sustain damages resulting from Defendants’ misappropriation of trade secrets.

44. Subsequent to the enactment of the DTSA, and while Carter was employed by Empire, Defendants misappropriated Empire’s trade secrets and other confidential information that are used in, or intended for use in, interstate or foreign commerce.

45. Defendants obtained access to and misappropriated Empire's trade secrets and other confidential information related to Empire's products and business matters that are used in, or intended for use in, interstate or foreign commerce. At present, Defendants' misappropriation of trade secrets and other confidential information includes:

- The spreadsheet which included specific, non-public contact information for individuals who worked for Empire's current and prospective customers and notes regarding the needs of those customers as they related to underground utility products;
- The confidential information and business plan, sales strategy, and marketing presentation contained in the PowerPoint Empire created for its Florida markets; and
- The confidential bid and pricing information contained in Empire's bid spreadsheets and forms.

46. Defendants took the specific trade secrets and other confidential information belonging to Empire, and entrusted to Defendant Carter while employed at Empire, and sought to replicate Empire's business model, practices, and solicit Empire's current and prospective customers in a competing business.

47. Moreover, and as detailed above in Paragraphs 1 through 33, Defendants have willfully sought to abuse their confidential and proprietary knowledge as to

Empire's customer information, customer ordering preferences, business plans, sales strategies, marketing presentations, and pricing against Empire in the following ways:

- Wrongfully obtaining and utilizing the confidential bid and pricing information contained in Empire's bid spreadsheets and forms to prepare and submit their own bids to Empire's current and prospective customers;
- Wrongfully obtaining and disseminating the confidential business plan, sales strategy, and marketing presentation contained in the PowerPoint Empire created for its Florida markets to at least one of Empire's competitors; and
- Wrongfully obtaining and utilizing Empire's confidential customer information to contact, solicit and sell competing products to Empire's current and prospective customers.

48. The items and practices misappropriated by Defendants are valuable trade secrets and protected confidential information, and Empire has taken reasonable steps as part of its ongoing standard operating procedures to maintain the confidential nature of this information.

49. As a result of Defendants' misappropriation and unauthorized use, removal, and manipulation of Empire's trade secrets and other confidential information described above, Defendants have violated the DTSA.

50. As a direct and proximate result of Defendants' violations of the DTSA, Empire has incurred and will continue to incur substantial damages in an amount to be determined at a trial on this matter.

51. Defendants' actions in converting and misappropriating Empire's trade secrets and other confidential information for their own gain were willful, wanton and malicious, and were taken with reckless disregard for the rights of Empire.

52. Defendants' actions have caused and will continue to cause Empire irreparable harm if not permanently enjoined.

53. Empire has no adequate remedy at law.

WHEREFORE, Empire respectfully requests a judgment against the Defendants for compensatory and exemplary damages, continuation of the preliminary injunction or conversion into a permanent injunction, prejudgment interest, and an award of costs and reasonable attorneys' fees pursuant to the DTSA (18 U.S.C. § 1836(b)(3)(d)), and any such other relief as the Court deems just and proper.

COUNT II
MISAPPROPRIATION OF TRADE SECRETS PURSUANT TO ALA. CODE § 8-27-1, ET SEQ.

54. Empire incorporates Paragraphs 1 through 53 above as if set forth fully herein.

55. The confidential information detailed above, regarding Empire's confidential customer information, business plan, sales strategy, marketing presentation, and pricing information, are trade secrets as defined by Alabama Code § 8-27-2(1).

56. Those trade secrets are the property of Empire.

57. The Defendants obtained the trade secrets through improper means and/or otherwise as described in Alabama Code § 8-27-3.

58. The Defendants used and/or disclosed the trade secrets of Empire, in ways they were not privileged to disclose, for example, to market and sell competing products to Empire's current and prospective customers.

59. The Defendants' misappropriation of Empire's trade secrets was willful and malicious under Alabama Code § 8-27-4(a)(2).

WHEREFORE, Empire demands judgment against the Defendants, for all amounts allowed under Alabama Code § 8-27-4, including any profit and/or benefits conferred on the Defendants by the misappropriation, actual damages suffered by Empire, and exemplary damages, plus interest, attorneys' fees, and costs of this proceeding.

COUNT III
VIOLATION OF THE FEDERAL COMPUTER FRAUD AND ABUSE ACT (CFAA) 18 U.S.C. § 1030 ET SEQ.

60. Empire incorporates Paragraphs 1 through 59 above as if set forth fully herein.

61. Empire operates a computer network ("Computer System") to which access is limited to those with a need for use and authorization in connection with providing services that affect interstate commerce in the United States.

62. The Computer System is secure and requires authentication and a password for access and use.

63. Access to the Computer System and thus to the confidential information is restricted pursuant to policy and by the need for a password to those with a need for use and authorization and is Empire's business purposes only.

64. Defendants intentionally accessed Empire's Computer System and accessed, copied, and took confidential information belonging to Empire, that was stored on Empire's Computer System without authorization and/or by exceeding their authorized access, all in violation of CFAA § 1030(a)(2).

65. Empire has been damaged and has suffered losses as a result of Defendants' actions in an amount exceeding $5,000.

66. Defendants' actions have caused and continue to cause Empire irreparable harm.

WHEREFORE, Empire demands judgment against the Defendants, for all amounts allowed under 18 U.S.C. § 1030, et seq., including any profit and/or benefits conferred on the Defendants by their misconduct, actual damages suffered by Empire, and exemplary damages, plus interest, attorneys' fees, and costs of this proceeding.

COUNT IV
BREACH OF DUTY OF LOYALTY AND FIDUCIARY DUTY

67. Empire incorporates Paragraphs 1 through 66 above as if set forth fully herein.

68. As a full time employee of Empire, Carter owed Empire a duty of loyalty and a fiduciary duty.

69. Empire's policies and procedures provide that an employee "may not accept any extra work of any kind that will require his or her time and energy to a degree that will interfere with the performance of duties required by [Empire]."

70. Carter breached his duty of loyalty and his fiduciary duty he owed to Empire by, *inter alia*, marketing and selling competing products to Empire's current and prospective customers on behalf of Trinity and Pipe Inspectors while employed with Empire.

71. Carter also breached his duty of loyalty and fiduciary duty when he, without Empire's knowledge or consent, entered into a purported contract on behalf of Empire with one of Empire's customers that was contrary to Empire's best

interests, business plan, and historical business practices, and then misled Empire's upper management regarding the Company's sales to that customer. Specifically, Carter unilaterally entered Empire into a purported long-term, fixed price contract with a customer contrary to Empire's best interests, business plan, and historical business practices. Carter entered into this purported contract without Empire's knowledge or consent. Furthermore, Carter misled upper management when he stated he would work on increasing the price of the sales to the customer knowing he could not do so under the purported contract with that customer. Carter failed to inform anyone at Empire about the purported contract.

72. But for Carter's breaches of his duty of loyalty and his fiduciary duty, these sales would have been made by Empire. They were not, and as a result Empire suffered damages in the form of hundreds of thousands of dollars in lost profits and revenue, as well as the ongoing costs Empire has incurred in the form of lost time spent by Empire management and personnel.

WHEREFORE, Empire demands judgment against Carter for damages caused by his breach of his duty of loyalty and/or fiduciary duty owed to Empire, including costs Empire has incurred, lost revenue and profits.

COUNT V
INTENTIONAL INTERFERENCE WITH BUSINESS RELATIONS

73. Empire incorporates Paragraphs 1 through 72 above as if set forth fully herein.

74. A business relationship exists between Empire and its customers who were solicited by the Defendants.

75. The Defendants were fully aware of Empire's relationship with the customers they solicited.

76. The Defendants intentionally interfered with Empire's relationship with its customers by, *inter alia*, soliciting those same customers in order to sell competing products.

77. There is no justification for Defendants' interference. In fact, Defendants' willful and intentional interference with Empire's business relations was in direct violation of Carter's duties he owed to Empire.

78. As a result of the Defendants' acts, Empire has been damaged in the form of lost revenue and profits. Empire has also suffered damage to its goodwill and reputation.

WHEREFORE, Empire demands judgment against the Defendants for lost profits suffered by Empire, plus interest, as well as damage to Empire's goodwill and reputation. Empire also demands punitive damages, attorneys' fees, and costs of this proceeding.

COUNT VI
FRAUDULENT MISREPRESENTATION UNDER ALA. CODE § 6-5-101

79. Empire incorporates Paragraphs 1 through 78 above as if set forth fully herein.

80. Carter knowingly submitted false expense reimbursement requests to Empire which reflected expenses Carter incurred by during the course of pursuing the Defendants' business interests – not Empire's.

81. Empire relied on Carter's false representation that he incurred those expenses during the course of his work for Empire. As a result of that reliance, Empire reimbursed Carter for expenses he incurred.

82. Empire has been damaged by Carter's false representation in the form of those reimbursement payments to Carter.

WHEREFORE, Empire demands judgment against the Defendants for compensatory and punitive damages in an amount to be determined by a jury, and such further relief as deemed just by the jury or the Court.

COUNT VII
FRAUDULENT SUPPRESSION UNDER ALA. CODE § 6-5-102

83. Empire incorporates Paragraphs 1 through 82 above as if set forth fully herein.

84. As a full time employee of Empire, Carter owed a duty to Empire to disclose that he – through Trinity and Pipe Inspectors – was engaged in a competing business with Empire and that he was soliciting and selling competing products to Empire's current and prospective customers.

85. Carter did not disclose these facts, and in fact actively misled Empire into believing that he was working diligently on the Company's behalf.

86. Empire was induced to act by Carter's fraudulent concealment, as it continued to employ Carter as a full time employee while Carter, on behalf of Trinity and Pipe Inspectors, was actively soliciting and selling competing products to Empire's current and prospective customers.

87. Empire was injured by Carter's fraudulent concealment in the form of compensation and benefits paid to Carter. Additionally, as a result of Carter's fraudulent concealment, Empire suffered damage in the form of lost sales, revenue and profits with respect to sales made by Pipe Inspectors to Empire's current and prospective customers, as well as damage to Empire's reputation and goodwill.

WHEREFORE, Empire demands judgment against Carter for compensatory and punitive damages in an amount to be determined by a jury, and such further relief as deemed just by the jury or the Court.

COUNT VIII
CONVERSION

88. Empire incorporates Paragraphs 1 through 87 above as if set forth fully herein.

89. The Defendants wrongfully took possession Empire's property in the form of money expended by Empire to reimburse Carter for expenses he submitted for reimbursement.

90. Carter was not entitled to reimbursement from Empire. The expense reports he submitted contained expenses incurred while advancing and promoting the business interests of Pipe Inspectors and Trinity, not Empire.

91. Carter had no legal right to reimbursement, and yet utilized those reimbursement funds for his own purposes to advance the business interests of Pipe Inspectors and Trinity, all to Empire's detriment.

WHEREFORE, Empire demands judgment against the Defendants for compensatory and punitive damages in an amount to be determined by a jury, and such further relief as deemed just by the jury or the Court.

COUNT IX
CIVIL CONSPIRACY

92. Empire incorporates Paragraphs 1 through 91 above as if set forth fully herein.

93. At all material times, each Defendant acted as the agent, partner, servant, joint venture and/or co-conspirator of each or all of the other Defendants. The Defendants also acted as the agents, partners, servants, joint venturers and/or co-conspirators of Angel Carter – Carter's wife and co-owner of Trinity.

94. Together, the Defendants and non-party co-conspirator Angel Carter conspired to do the above-described unlawful, oppressive, and immoral acts through unlawful oppressive and immoral means. They acted willfully and/or recklessly in furtherance of this conspiracy.

95. Defendants and non-party co-conspirator Angel Carter formed their conspiracy shortly before Carter began his employment with Empire in April 2015. The central purpose and intent of the conspiracy was to utilize Empire's confidential and propriety information, as well as its reputation and goodwill, to contact Empire's current and prospective customers and then to secretly solicit and ultimately sell competing products to those customers.

96. As a direct and proximate result of this conspiracy, Empire suffered substantial damages, including but not limited lost revenue and profit in its business and damage to its reputation and goodwill.

WHEREFORE, Empire demands judgment against the Defendants for compensatory and punitive damages in an amount to be determined by a jury, and such further relief as deemed just by the jury or the Court.

COUNT X
UNJUST ENRICHMENT/MONIES HAD AND RECEIVED

97. Empire incorporates Paragraphs 1 through 96 above as if set forth fully herein.

98. Under Alabama law, an employee is precluded from receiving compensation for conduct that is disloyal to the employer or in violation of the employee's contract.

99. Carter breached his duty of loyalty to Empire and acted in bad faith by, *inter alia*, misappropriating Empire's confidential and proprietary information and

by secretly soliciting and selling competing products to Empire's current and potential customers while employed at Empire.

100. During the course of his employment with Empire, Carter worked for his own personal benefit – and for the benefit of Trinity and Pipe Inspectors – rather than for Empire's benefit, despite the fact he was employed and paid by Empire.

WHEREFORE, Empire requests the Court find that Carter has been unjustly enriched at Empire's expense and order the Defendants to repay Empire for all salary and benefits Empire paid to Carter since April 13, 2015, plus any applicable interest. Empire also requests that the Court grant any other relief to which Empire may be entitled.

PRAYER FOR RELIEF

Empire demands judgment against the Defendants for compensatory and punitive damages in an amount to be determined by a jury, as well as interest, attorneys' fees, costs and expenses, and such other relief as the Court and/or jury deem just.

JURY DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Empire respectfully requests a trial by jury of all issues properly triable by jury.

DATED: October 11, 2017.

s/ Benjamin T. Presley

Jay M. Ezelle (ASB-4744-Z72J)
Benjamin T. Presley (ASB-0136-I71P)
STARNES DAVIS FLORIE LLP
100 Brookwood Place, 7th Floor
Birmingham, AL 35259-8512
(205) 868-6000
Fax: (205) 868-6099
E-mail: jme@starneslaw.com
btp@starneslaw.com

Attorneys for Empire Pipe & Supply Company, Inc.